93-458

No.

Supreme Court, U.S.
FILED
SEP 21 1993
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In The

Supreme Court of the United States

October Term, 1993

L. Shieh, et al.,

Petitioners,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Respondents.

Andrew Castellano, et al.,
and
William Highberger, et al.,
Real Party In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

James L. Andion, Esq.
Law Office of James L. Andion
301 N. Lake Avenue, Suite 720A
Pasadena, California 91101
(818) 405-0344

105 pp

THE QUESTION PRESENTED FOR REVIEW

I. As a matter of first impression, whether California vexatious litigant statute (California Code of Civil Procedure ("CCP") Section §391 et seq.) in general, and its 1990 amendments (subdivisions §391(b)(3), (b)(4) and §391.7) in particular, unduly violates a pro se litigant's rights of equal protection and due process as guaranteed by the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution?

II. Whether the trial court's sanction orders made by a disqualified judge against the petitioners and their counsel in this action in violating Section §128.5 of the CCP, and thus infringing petitioners' constitutional rights of due process and equal protection?

ALL PARTIES TO THE PROCEEDING

PLAINTIFFS and PETITIONERS:

SAY & SAY, a California corporation and LIANG-HOUH SHIEH, an individual, and JAMES L. ANDION, counsel for Plaintiffs and Petitioners.

DEFENDANTS and RESPONDENTS:

1. In Christopher case:

O'MELVENY & MEYERS AND ITS GENERAL PARTNERS, GIBSON, DUNN & CRUTCHER AND ITS GENERAL PARTNERS, AND RICHARD TARLOW.

2. In Castellano case:

ANDREW CASTELLANO; FRANCISCA N. ARAIZA; GERALD HOLLINGSWORTH; IMPERIAL SAVINGS; HOUSEHOLD BANK.

TABLE OF CONTENTS

I. OPINION BELOW 2

II. JURISDICTION 4

III. FEDERAL LAW INVOLVED 5

IV. STATEMENT OF CASE 6

V. REASONS FOR GRANTING WRIT ... 10

A. CCP §391 in General and CCP §391(b)(3),(b)(4) and §391.7 in Particular Are Unconstitutionally Vague, Overbroad and Prejudice and Thus Violating a Litigant's Rights of Equal Protection and Due Process 10

1. Historical Background of CCP §391 10

2. Constitutionality of New 1990 Version of CCP §391 14

a. CCP §391(b)(3) ... 17

b. CCP §391(b)(4) ... 21

c. CCP §391.7 27

B. The Trial court's Order of Sanctions of More Than $100,000.00 Is In Violation of CCP §128.5 34

VI. CONCLUSION 37

TABLE OF CASES

Page

Stafford v. Russell, et al.,
201 Cal. App. 2d 719, 20 Cal. Rptr. 112 (1965) 10

Cohen et al. v. Beneficial Industrial Loan Corporation
337 U.S. 541,
69 S. Ct. 1221 (1949) 11

Beyerbach v. Juno Oil Co., et al.,
42 Cal. 2d 11,
265 P.2d 1 (1954) 11

Camerado Insurance Agency, Inc. v. Superior Court (Stolz II.)
12 Cal. App. 4th 838,
16 Cal. Rptr. 2d 42 (1993) ... 15

Erie R. Co. v. Tompkins,
304 U.S. 64, 58 S.Ct. 817 (1948) 28

Donovan v. City of Dallas,
377 U.S. 408, 84 S. Ct. 1579 (1964) 28

United States, et al. v. Madison D. Locke, et al.,
105 S. Ct. 1785, 471 U.S. 84, (1985) 33

Thomas Freytag, et al. v. Commissioner of Internal Revenue,
111 S. Ct. 2631,

115 L. Ed. 2d 764 (1991) 33

Liamas v. Diaz,
218 Cal. App. 3d 1043, 267 Cal. Rptr. 427 (1990) 35

STATUTES

28 U.S.C. §1257(a) 4

28 U.S.C. §1651(a) 4

California Code of Civil Procedure,
§391(b)(3) 3

California Code of Civil Procedure,
§391(b)(4) 3

California Code of Civil Procedure,
§391.7 5

California Code of Civil Procedure,
§128.5 6

California Code of Civil Procedure,
§391.2 8

California Code of Civil procedure,
§391(b)(1) 20

RULES

U.S. Supreme Court Rule,
Section 10.1(c) 4

APPENDICES:

Page

A Judgment of the California Supreme Court, July 28, 1993 ... 39

B Judgment of the California Court of Appeal, July 15, 1993 42

C Minute Order of Superior Court of California for the County of Los Angeles, November 17, 1992 . 46

D Order of the Superior Court of California for the County of Los Angeles, June 3, 1993 51

E Order of the Suprerior Court of California for the County of Los Angeles, July 27, 1993 58

F Plaintiffs' Notice of Appeal, June 8, 1993 63

G Order of the Superior Court of California for the County of Los Angeles, June 28, 1993 79

H Defendant Highberger's Motion for Sanctions Against Plaintiffs and Their Counsels, January 19, 1993 83

I Sections §391 to §391.7 of the California Code of Civil Procedure As amended in 1990 114

J Published Order of the California Court of Appeal, August 12, 1993 125

K Declaration of K. Hung 171

L Notices of Substitution of Attorney 178

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1993

L. Shieh, et al., Petitioners,

vs.

Superior Court of the State of California, County of Los Angeles, Respondents,

Andrew Castellano, et al.,

and

William Highberger, et al.,

Real Parties in Interest.

To the Honorable William Rehnquist, the Chief Justice, and Associate Justices of the Supreme Court of the United States.

Say & Say, a California corporation ("Company"), and L. Shieh, the petitioners herein, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of California entered in the above-entitled case on July 28, 1993.

I. OPINION BELOW

The opinion of the Supreme Court of California dated July 28, 1993, which denied the petition for review is unreported and is attached as petitioner's Appendix A. The judgment of the Court of Appeal dated July 15, 1993, which denied the petitioner's petition for writ of mandate is attached as Appendix B. The Minute Order entered by Judge Edward Kakita of the Superior Court of Los Angeles County is attached

as Appendix C, in which Judge Kakita declared petitioner Shieh to be a vexatious litigant under California Code of Civil Procedure section §391(b)(3) and (b)(4). The order of the Superior Court of Los Angeles County dated June 28, 1993, imposed more than $100,000.00 sanctions against Petitioner Shieh and his counsels of record for their good faith effort to correct the trial court's mistakes, and inexplicably issued yet another order to show cause re: contempt against Petitioner Shieh's counsel James L. Andion, to be heard on July 27, 1993, is attached as Appendix D. The order of the Superior Court of Los Angeles County dated June 3, 1993, which dismissed the case as to Plaintiff Shieh, is attached at page 32. The order of the Superior Court of Los Angeles County dated July 29, 1993,

which purportedly dismissed the case as to Company, on the unsubstantiated and false charge of alter ego, which results in the declaration of the Company as a vexatious litigant ["VL"], is attached as Appendix E.

II. JURISDICTION

The judgment of the Supreme Court of California (Appendix A) was entered on July 28, 1993, which denied Petitioners' petition for review in a case involving constitutional issues. Under 28 U.S.C. §1257(a), 28 U.S.C. §1651(a) and Supreme Court Rule 10.1(c), this Court will review a state judgment by writ of certiorari, if "a state court... has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a

federal question in a way that conflicts with applicable decisions of this court."

III. FEDERAL LAWS INVOLVED

A. Section §391 et seq. of California Code of Civil Procedure ("CCP"), in general, and CCP §391(b)(3) and (4), and §391.7, in particular, are unconstitutional in that they violate a litigant's constitutional rights of equal protection and due process, as guaranteed by the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution.

B. The trial court sanction orders, made on the irrebutable presumption of guilt and that Dr. Shieh was in pro per, when he in fact was/is represented by

counsel at all relevant times and in all cases, and that Dr. Shieh is a vexatious litigant, and thus all actions of Dr. Shieh's counsel are frivolous, are invalid and violated Petitioners' right to due process, and equal protection.

C. The trial court sanction orders imposed on Petitioners and their counsel is in violation of California Code of Civil Procedure ("CCP) §128.5 and an infringement of petitioners' due process and equal protection rights.

IV. STATEMENT OF CASE

Say & Say, L. Shieh v. Castellano, et al, ("Castellano Case"), L.A. Sup.Ct. Case No. BC 059833, and L. Shieh, Say & Say v. O'Melveny & Meyers, et al. ("OMM Case"), L.A. Sup.Ct. Case No. BC 054981, were reassigned to Judge Edward Y.

Kakita along with other cases.

Judge Kakita indicated that he would get rid of all of Petitioners' cases, and he did exactly what he said. The issue of Judge Kakita's automatic disqualification is now pending in this Court, case No. 93-295.

On November 17, 1992, Judge Kakita entered a minute order declaring petitioner Shieh as a vexatious litigant under CCP §391(b)(3) and(4), even though petitioner Shieh has never appeared in the court to argue his own cases, has never spoken with opposing parties/counsels and has always been represented by lawyers in the Castellano and OMM actions and in all other actions. Appendix C.

On June 3, 1993, following his less than hospitable attitude towards petitioners, Judge Kakita ordered that

both actions be dismissed with prejudice, in violation of CCP §391.2 Appendix D.

On or about June 8, 1993, petitioners filed their third Notice of Appeal. Appendix F.

On June 28, 1993, Judge Kakita imposed more than $100,000.00 sanctions against petitioner Shieh and his former attorneys. The sole basis for such hatred and outrageous sanctions is based on defendant Highberger's motion, that Highberger's one motion and one reply paper which he had the audacity to claim cost more than $100,000. Appendix G. On September 8, 1993, Judge Kakita could not grant Highberger's motion for additional sanctions because it was woefully inadequate in setting forth any factual basis. However, instead of denying the motion, Judge Kakita

recommended that Highberger and Castellano supplement their deficient declarations giving them until September 29, 1993 to file and serve supplemental declarations. Petitioners have claimed that Highberger induced petitioners' former lawyers to breach their professional and fiduciary duties. See, Appendix H. The California state trial court judge granted deferential and preferential treatment to defendant Highberger by not denying the motion for procedural deficiencies, but instead allowing him and petitioners' former lawyers additional time to correct and supplement their papers, because Highberger is an attorney in the law firm of Gibson, Dunn & Crutcher ("GDC") who represents O'Melveny & Meyers ("OMM"), two of the largest law firms in Los Angeles.

V. REASONS FOR GRANTING WRIT

A. CCP Section §391 In General and CCP §391(b)(3),(4) and §391.7 In Particular Are Unconstitutionally Vague, Ambiguous and Overbroad and Thus Violating a Litigant's Rights of Equal Protection and Due Process.

1. HISTORICAL BACKGROUND OF CCP §391.

The full text of CCP §391 is attached hereto as Appendix I.

CCP §391 ("Vexatious Litigant" statute) was first added into the California Code of Civil Procedure in 1963. (Stats.1963, Ch.1471,s1,p.3038) Stafford v. Russell, et al., 201 Cal. App. 2d 719, 20 Cal. Rptr. 112. The

1963 version of CCP §391 was modeled on a similar section in California Corporation Code (then §834, now §800, on shareholder's derivative actions), which in turn was first adopted in California in 1947.

The §834 type of statute restraining shareholder's derivative litigation against corporations was first recognized by the U.S. Supreme Court in 1949 in Cohen et al. v. Beneficial Industrial Loan Corporation, 337 U.S. 541, 69 S. Ct. 1221 (1949), and by the California Supreme Court in Beyerbach v. Juno Oil Co., et al., 42 Cal. 2d 11, 265 P.2d 1 (1954).

Among other things, in comparing the 1963 versions of §834 and §391, we find that both statutes set a 30-day limitation for the defendant to file the motion for securities from the

plaintiff. §834 further set up a ceiling limit of $15,000.00 dollars for the amount of security to be posted by the shareholder plaintiff. However, Judge Kakita requested petitioner Shieh to post more than a $40 million security in the OMM case, and more than $500,000 security in the Castellano case, both within 10 days from May 24, 1993; and dismissed both actions on June 3, 1993. The security of more than $40 million in one case could be the highest in American legal history.

Judge Kakita has uniformly granted all defendants' motions and denied all petitioners' motions in both cases and all other cases, regardless of their merits. Judge Kakita is supported in decisions in this case by Judge Millard, assistant presiding judge of the Orange County Superior Court, and by Division

One of the Court of Appeal, Second Appellate District. The Spencer-Millard-Kakita courts have controlled petitioners' case and have retaliated against petitioners leaving petitioners slight recourse because the California Supreme Court granted petitions for review in less than two percent (2%) of civil cases annually. Division One of Court of Appeal has attempted to control all of petitioners' cases. Appendix X. Division One has imposed an irrebutable presumption that petitioners' causes of actions are always wrong and that all petitioners' cases to them are the same. Accordingly, Division One has consistently denied a writ of mandate on Judge Kakita's two body attachments without bail, petitioners' lawyers' contempt, in violation of double jeopardy and right to exercise a

peremptory challenge, and on more than $100,000 in sanctions.

As a matter of first impression, neither the California Supreme Court nor the U.S. Supreme Court have ever made any decisions upon the validity of the new 1990 version of CCP §391.

2. THE CONSTITUTIONALITY OF THE NEW 1990 VERSION OF CCP §391.

The new 1990 version of CCP §391 has broken the mold of the old constitutional version of §391.[1]

[1] The Court of Appeal has correctly summarized the new features of the 1990 amendments of §391: "... the Legislature expanded the definition of 'litigation' to include civil actions in federal courts, broadened the definition of "vexatious litigant" to incorporate the types of conduct set out in subdivisions (b)(3) and (b)(4) of section 391, clarified that the definition of "plaintiff" includes attorneys acting in propria persona, ... and empowered trial courts to enter prefiling orders prohibiting pro se vexatious litigants from filing new

The "vexatious litigant" standards are thus much more vague, uncertain, ambiguous and contradictory than ever because Judges Spencer, Millard, and Kakita have sought to rewrite the law and Constitution to obtain their intended result against petitioners. The court's power to declare a person to be a "vexatious litigant" is overbroad, arbitrary and irrational.

In the most recent decision, Division One of the Second Appellate District of the California Court of Appeal, for the first time in American history: (1) declared a "defendant", who was/is represented by lawyers in all cases at all relevant times, a "vexatious litigant"; (2) declared a

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actions without prior court approval". Camerado Insurance Agency,Inc. v. Superior Court (Stolz II.), 12 Cal. App. 4th 838, 16 Cal. Rptr.2d 42 (1993). (Emphasis added.)

California corporation a vexatious litigant, (3) declared petitioner Shieh's past and current 20 law firms and unknown number of future lawyers "puppets" of petitioner Shieh; (4) prohibited all of Shieh's current and future lawyers from filing new litigation, new writ petitions and new appeals; (5) determined the merits of all of Shieh's cases through Spencer's court's self-creation of totally phony stories in violation of CCP §391.2; and (6) ordered and advised all Court of Appeals and all lower courts to dismiss all petitioner Shieh's cases and retaliate against petitioner Shieh. Although this may seem incredible, we ask the Court to direct its attention to Appendix X. The California court emotionally and discriminatorily violated petitioners' constitutional

rights of equal protection and due process of law. Following are some constitutional issues posed by subdivisions (b)(3) and (b)(4) of §391 and §391.7, as applied particularly in the instant actions.

a. CCP Section §391(b)(3)

CCP §391(b)(3) defines a person to be a "vexatious litigant" if he "[I]n any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay".

The core issues of this subdivision include the meaning of the words like "in any litigation", "in propria

persona", "repeatedly", "unmeritorious", "papers" and "unnecessary delay".

Does "in any litigation" mean in the very litigation where §391 is considered to be applied, or in any one of the previous, totally unrelated litigation cases where the plaintiff in this present proceeding happened to be a party involved? Does "in pro per" also include a litigant who is represented by a lawyer? What is the standard of "repeatedness"? In the instant OMM action, for example, petitioner filed this action in or about June, 1992; and Judge Kakita made the "vexatious litigant" declaration on November 17, 1992. Between July and November 17, 1992, plaintiffs' "lawyers" only filed the first amended complaint, and approximately two opposition papers opposing two vexatious litigant motions.

On the other hand, defendants filed at least 19 motion papers to request the court to declare plaintiff Shieh to be a vexatious litigant ("VL"). Why was only defendants' counsel absolved from the effects of the stay? In fact, it is the defendants who are engaging in §391 motion tactics to cause unnecessary delay. Apparently, Judge Kakita would have been erred in declaring Shieh a VL under CCP §391(b)(3) in this very action because by that time none of plaintiffs' papers was repetitive nor were they totally without merit. Most importantly, petitioner Shieh was/is not in pro per and all papers were prepared and filed by his lawyers.

There is no definition as to what constitutes "papers", and what are "unmeritorious" and "unnecessary".

Another interpretation of the

application of §391(b)(3), as suggested by the defendants and apparently as relied upon by Judge Kakita is that "in any litigation" means in any state or federal litigation other than in this very action.

If that is the correct interpretation, then CCP §391(b)(3) would be in serious conflict with subdivision §391(b)(1): In CCP §391(b)(1), to define a VL, there are time limitations (immediately preceding seven years), litigation number limitations (at least five litigations), and their result limitation (finally determined adversely). In subdivision (b)(3), however, there appears to no time limitation, one litigation seems to be enough to determine a VL, nor is there even any requirement that the litigation

be finally determined adversely to the plaintiff.

To this extent, CCP §391(b)(3) not only overlaps with and supersedes CCP §391(b)(1), but also breaks its mold of constitutional certainty.

b. CCP Section §391(b)(4)

Under §391(b)(4), a "vexatious litigant" is a person who "[H]as previously been declared to be a vexatious litigant by any state or federal court in any action or proceeding based upon the same or substantially similar facts, transactions, or occurrence".

The interpretation and application of this subdivision have caused great confusion and uncertainty. Arguably, CCP §391(b)(4) is inconsistent with the

other three subdivisions of subsection (b): If a person is qualified to be a VL under either subdivision (b)(1), (b)(2) or (b)(3), but has not yet been so declared by a state court, then subdivision (b)(4) does not apply. However, if such person has already been declared to be a VL, whether or not correct or final, then there is no need to apply subdivision (b)(4) one more time because, under CCP §391.7, one declaration by a state court is good enough to restrict a VL from filing new litigation for his whole life.

The only logical inference left, therefore, is that the term "any state or federal court of record" in subdivision (b)(4) means not only the state or federal courts in the state of California, but also includes all of the state or federal courts of record in all

other 49 sister states, so that, once a person has been declared to be VL under procedure of the federal statutes or the statutes of other 49 sister states, such person will be declared a VL once again under CCP §391(b)(4) if he brings new litigation in a California state court based upon the same or similar facts, transaction or occurrence.

The logical interpretation has resulted in very absurd consequences. CCP §391 is in fact creating double or multiple standards and double or multiple procedures in determining a VL: On the one hand, it is the CCP §391 standard under subdivisions (b)(1), (b)(2) and (b)(3); on the other hand, it is another unknown standard and procedure of vexatious litigant under the federal laws, or the laws of any other 49 sister states, or their local

rules.

To the best of petitioners' knowledge, neither the federal laws nor the statutes or local rules of any other 49 sister states contain any same or similar "vexatious litigant" statute as CCP §391. Therefore, a "vexatious litigant" is very easily to be "declared" by a federal court or a sister state court under quite different standards and criteria. As a matter of fact, Judge Kakita declared petitioner Shieh a VL under CCP §391(b)(4) simply because a federal district judge, in L.C.Hsieh and L. Shieh v. Christopher, et al., U.S.D.C., C.D. Cal., No.91-6968-MRP(Sx), addressed a "comment" to petitioner Shieh's "lawyer" that it is "ridiculous" to sue all general partners under §15015 of the California General Partnership Act. A "comment" directed to

petitioner Shieh's lawyer became a "declaration" of petitioner Shieh as a vexatious litigant. This is contrary to the existing law. The same comment was emotionally followed by trial court Judge Millard, and then by appellate Judge Spencer. A "comment" upon a litigant's "lawyer" has destroyed all of petitioner Shieh's fundamental rights. This Court should determine the legality and the constitutionality of CCP §391(b)(4).

The California Court of Appeal declared petitioner Shieh to be a "vexatious litigant" under §391(b)(4) simply because, in PSJ Corp. and Percy Chien v. Harry Hathaway, et al., U.S.D.C., C.D. Cal., No.91-6714-RG(Ex), Federal District Judge Tevrizian commented upon a third party's disqualification against District Judge

Gadbois to be "wholly frivolous and a sham." The comment is not directed to petitioner Shieh, and petitioner Shieh was not even a party in that action at all.[2]

Such federal judges' comments upon a third party had amounted to a "declaration" under CCP §391(b)(4). The California Court of Appeal, Division One overreached to the point of playing the role of the legislature to rewrite CCP §391. The California Court of Appeals acted analogously to convicting

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[2] Shieh was the counsel for the plaintiffs in this action. In Camerado Insurance Agency, Inc. v. Superior court (Stolz II), (1993) 12 Cal. App. 4th 838, 16 Cal. Rptr. 2d 42, the California Court of Appeal for the Third Appellate District interpreted the application of CCP §391 that "A more plausible reason for the amendment's limitation to attorneys "acting in propria persona" is to make plain that section 391 does not apply to opposing counsel, who is also a person who "commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained," and thus otherwise would fall within the definition of 'plaintiff'".

petitioners to a death knell based on a non-related third party's innocent actions. For example, PSJ Corporation's rights, a non related third party, has been seriously impaired.

In fact, §391(b)(4) could name any person a VL at any time, under any circumstances, and for any reasons or no reasons, that could be imagined by a judge.

c. CCP Section §391.7

Subdivision (a) of §391.7 allows a state court to "enter a pre-filing order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed".

(Emphasis added).

The words "in the courts of this state" are fatally vague and uncertain. Is it constitutional to allow a municipal court to restrain a VL person from filing new litigation in a superior court? Does it include the federal courts in California? As indicated above, the 1990 amendments intend to expand its application to the federal courts. Even if by its plain meaning CCP §391.7 might not directly apply to the federal courts, under the rule of Erie R. Co.v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, (1948), federal courts in the state of California will apply California state law, including CCP if applicable, in the diversity of citizenship cases. Therefore, §391.7 will possibly be applied to the federal courts.

In Donovan v. City of Dallas, (1964) 377 U.S. 408, 84 S.Ct. 1579, the U.S. Supreme Court ruled that "State courts are completely without power to restrain federal-court proceedings in in personam actions, even though prohibition is addressed to parties rather than to the federal court itself". Thus, §391.7(a) is contradicting the U.S. Supreme court's rulings in that it might unduly restrain a "VL" litigant from filing new actions in a federal court, at least in the diversity of citizenship type of cases.

Subdivision (a) of section §391.7 is also unconstitutional in that such a pre-filing restraining order is lasting permanently for life. Once a person has been declared to be a VL by any court of record, there is no procedure or statute to lift the restraining order, or to

suspend its application. Such penalty sounds like a death penalty and even much worse than a life-term imprisonment because, even a sentenced criminal is entitled to certain relief remedies such as parole, probation, conditional release, rehabilitation, pardon, etc. CCP §391.7 provides none of the other remedies to a declared "vexatious litigant" in his whole life.

Subdivision (b) of CCP Section §391.7 also poses serious problems. First of all, subdivision (b) requires the presiding judge to permit the filing of "new litigation" only if it appears that the litigation has merit. There is no explanation whether "merit" means the same as "reasonable probability" to prevail as used in Section §391.1 and Section §391.3, or if it requires a higher threshold standard. At such

early stage of litigation, the only proof of "merit" will be a VL's complaint. The intended defendant is not yet informed of the litigation. How could the presiding judge appraise the "merit" of the case without discovery? This makes a decision impossible when the "conspiracy" is alleged and when the evidence is under sole control of defendant as in the instant actions.

Furthermore, subdivision (b) of Section §391.7 allows the presiding judge to condition the filing of the new litigation upon the furnishing of security, even if the new litigation has merit. A defendant who retains a large law firm, such as defendants GDC and OMM, would require more security than a solo practitioner. A plaintiff whose case has merit but has financial difficulty is deprived of his

fundamental rights to access to the court, as part of his due process right.

On the other hand, under §391.3, a vexatious litigant is required to furnish security only when defendant has proved that the VL plaintiff has no reasonable probability to prevail against the defendant. This inconsistency would cause even harsher prejudice to a litigant in pro per who was declared to be a VL several decades ago and whose complaint is not as well written as a professional attorney's work, even though he has a good case.

The California Court of Appeal, Division One, i.e., the Spencer court, even extended the meaning of "in pro per" to a litigant's lawyer, Appendix J. The Spencer court prohibits petitioner Shieh's current and future lawyers from filing any litigation, in violation of

petitioner Shieh's right to counsel and in discriminating against petitioner Shieh. The Spencer court further extended the meaning of "new litigation" to include "writ and appeal", and of "VL" to non-natural persons, such as the Company, a California corporation, even if that Company is not owned and not controlled by petitioner Shieh. Petitioner Shieh is not a director or officer of the Company either. He is only one of several attorneys for the Company. Appendix K.

The California Court of Appeal has acted beyond its "original jurisdiction" as a reviewing court and in violation of the separation of powers.[3] It has

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[3] In United States, et al.v. Madison D. Locke, et al., (1985) 105 S.Ct. 1785. 471 U.S. 84, this Court held that: "The fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to

attempted to re-write the statute in question in order to reach its holding. This problem started from the superior court, which was then exaggerated by the California Court of Appeal, Spencer court.

B. The Trial Court's Order of Sanctions of More Than $100,000.00 Is in Violation of CCP §128.5.

In addition to the acts of the California courts stated above, the California court sentenced petitioner Shieh's lawyer to 5 days in jail, and

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do, nor is the judiciary licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result." Id, fn. at 84.

In Thomas Freytag, et al. v. Commissioner of Internal Revenue, (1991) 111 S.Ct. 2631, 115 L.Ed.2d 764, this court held that "Courts are not at liberty to create a statutory exception where Congress has declined to do so". Id, at p.2361.

sanctioned petitioner Shieh and his former lawyers more than $100,000 on June 28, 1993, and defendants sought sanctions of nearly $200,000 on September 8, 1993. The motion and declaration for sanctions were so deficient that the judge gave movants additional time to correct them, instead of denying the motion. The California courts were manipulated by those large law firm defendants.

As a general rule, sanctions under CCP §128.5 may not be awarded except upon a finding of bad faith. In Liamas v. Diaz (1990) 218 Cal. App. 3d 1043, 267 Cal. Rptr. 427, the court of appeal stated that to award sanctions against party or a party's attorney, there must be an assessment of "subjective bad faith" in addition to finding that particular "actions or tactics was

frivolous". Besides, to attribute an action to be "frivolous", it must be "totally and completely without merit". See, Llamas, supra. The court in Llamas declined to impose sanctions upon plaintiffs because, although the action was without merit, it was not instituted in bad faith.

In this action, the sanctions imposed by the trial court should be vacated since there is no finding showing petitioners and their attorneys have conducted action in "bad faith". See, June 28, 1993 Minute Order. What petitioners and their attorneys want to do is simply to correct, in good faith, the serious mistakes made by the trial court, through misrepresentations made by the defendants. They simply proved that (1) petitioner L. Shieh was/is not in propria persona; (2) Shieh is not a

vexatious litigant under CCP §391(b)(3) and (4); (3) Shieh has a reasonable probability to prevail; (4) the security of more than $40 million and $500,000.00 respectively is unreasonably excessive; and (5) the action should not be dismissed.

VI. CONCLUSION

Petitioners seek review on a writ of certiorari under the United States Supreme Court Rules, Rule 10.1 (c). The California state legislature 1990 version of CCP §391 et seq. is posing serious conflicts with both the U.S. constitution and the California constitution. Its application to this instant action is especially unfair and unconstitutional. This type of action constitutes State Action and is

discriminatory in nature, violated Petitioners' right to access to the court and rights of equal protection and due process; thus a writ should be issued to the California Supreme Court to protect petitioners' constitutional rights and undo the impact of the erroneous decisions.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Dated: September 13, 1993.

Respectfully submitted,

James L. Andion
301 North Lake Avenue
Suite 720A,
Pasadena, California 91101
(818) 405-0344
Counsel for Petitioners
L. Shieh, Say & Say
a California corporation

APPENDIX A

Second Appellate District,

Division One, No. B076677

S034096

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

IN BANK

SAY & SAY ET AL., Petitioners

v.

LOS ANGELES COUNTY

SUPERIOR COURT, Respondent

W. CHRISTOPHER, et al., Real Parties

In Interest

Petition for review DENIED.

LUCAS

_____

Chief Justice

APPENDIX B

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

L. SHIEH et al.,	)	B076677
Petitioners,	)	(L.A.S.C. Nos.
v.	)	BC054981,
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,	)	BC059833) (EDWARD Y. KAKITA,
Respondent,	)	Judge)
A. CASTELLANO et al.,	)	ORDER
Real Parties in Interest.	)	

THE COURT*:

The petition for writ of mandate / prohibition and request for stay, filed

July 7, 1993, has been read and considered.

The petition is denied.

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*SPENCER, P.J.

ORTEGA, J.

VOGEL (Miriam A.), J.

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 07/15/93

Law Offices of
James L. Andion
301 N. Lake Avenue
Suite 720D
Pasadena, CA. 91101

RE: Shieh, L.
vs.
s.c.l.a.
Castellano, A.
2 Civil B076677
Los Angeles NO. BC059833